

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROBERT MAYO

Plaintiff,

v.

MARION HOWELL, individually,
ARCBEST d/b/a ABF FREIGHT
SYSTEM, INC.

Defendants.

CIVIL ACTION FILE NO.:

DEFENDANTS' NOTICE OF REMOVAL

COMES NOW Defendants MARION HOWELL and ARCBEST d/b/a ABF FREIGHT SYSTEM, INC., by and through counsel, and file this Notice of Removal as follows:

1.

Plaintiff ROBERT MAYO (hereinafter "Plaintiff") filed a civil action against Defendants in the State Court of Fulton County, State of Georgia, Civil Action File No. 21EV002946, on May 13, 2021. A copy of the Complaint and all pleadings filed in the State Court action are attached hereto as Exhibit "A".

2.

According to his allegations in the Complaint, Plaintiff is a citizen of the State of Georgia.

3.

Defendant ABF Freight System, Inc. is an Arkansas corporation, which is both its state of incorporation and the state in which it maintains its principal place of business. 28 U.S.C. § 1332 (c) (1). ABF Freight System, Inc.'s registered agent is Corporation Service Company, which maintains its registered office at 300 South Spring Street, Suite 900, Little Rock, Arkansas 72201. ABF Freight System, Inc.'s principal place of business is 8401 McClure Drive, Fort Smith, Arkansas 72916. *See* Arkansas Corporations Database printout attached as Exhibit "B". Accordingly, ABF Freight System, Inc. is a citizen of the State of Arkansas.

5.

Defendant Marion Howell is a resident of the state of South Carolina and resides at 108 Harris Drive, Greer, SC.

6.

Complete diversity of citizenship exists between Plaintiff and the Defendants for purposes of 28 U.S.C. § 1332 (c) (1).

7.

With respect to removal on the basis of diversity jurisdiction, this removal is timely because it has been filed within thirty (30) days of Defendants ABF Freight, System, Inc.’s receipt of service papers on May 18, 2021. Defendant Howell was served June 7, 2021. This Notice of Removal is also timely because it is filed within thirty (30) days after receipt by a Defendant of a copy of the initial pleading setting forth the claim upon which this action is based. 28 U.S.C. § 1446 (b). The parties being fully diverse, this Court has jurisdiction pursuant to 28 U.S.C. § 1332 (a)(1).

8.

In his Complaint, Plaintiff claimed to have suffered “significant injuries” and “extensive damages and bodily injuries” as a result of the collision, without specifying a specific dollar figure as to his damages. Additionally, in his Complaint, Plaintiff alleges he “experience neck and back pain” and that as a result of the wreck had “emergency room treatment.” Moreover, Plaintiff alleges that “[a]s a result of the wreck, Plaintiff suffered a loss of quality of life.” As a result, this Court’s jurisdictional amount-in-controversy threshold of \$75,000 has been satisfied. See *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89, 135 S. Ct. 547, 554, 190 L. Ed. 2d 495 (2014)(“In sum, as specified in § 1446(a), a defendant’s

notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.”)

9.

Defendants hereby give notice within thirty (30) days after service and receipt by Defendants of a copy of the Complaint filed in the State Court of Fulton County, State of Georgia, pursuant to 28 U.S.C. § 1446 and Rule 11 of the Federal Rules of Civil Procedure, of the removal of this action to this Court.

10.

Defendants have simultaneously filed a Notice of Filing Removal in the State Court of Gwinnett County, State of Georgia. A copy of the Notice of Filing Removal, exclusive of exhibits, being filed with the State Court of Gwinnett County is attached hereto as Exhibit “C”.

11.

Good and sufficient defenses to Plaintiff’s claims exist. *See* Defendants’ Answer, filed as Exhibit “D” herewith.

12.

No previous application for the relief sought herein has been made to this or any other Court.

WHEREFORE, it is hereby requested that this Court grant the removal of this case to the United States District Court for the Northern District of Georgia, in which district this suit is pending.

Respectfully submitted this 17th day of June, 2021.

McMICKLE, KUREY & BRANCH, LLP

/s/ David C. Wright

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing pleading complies with the font and point selections approved by the Court in Local Rule 5.1C. This brief has been prepared in Times New Roman font, 14 point.

/s/ David C. Wright _____

DAVID C. WRIGHT
For the Firm

CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2021 I electronically filed **DEFENDANTS'** **NOTICE OF REMOVAL** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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/s/ David C. Wright
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For the Firm